

## **OUCC Comments to IURC Strawman GAO**

### **Improving Procedural Efficiencies Guidelines and Recommendations**

**Introduction:** In this document, the OUCC has set forth in bold selected portions of the Commission's Strawman with changes as proposed by the OUCC's redline. The bolded text is followed by a brief description or explanation of the changes the OUCC proposed. The following comments do not address every change or addition the OUCC proposes to the Commission's Strawman. If there are any questions by any party or the Commission to any redline the OUCC has proposed, the OUCC is available to have discussions about its recommendations.

- I. The following guidelines apply to all docketed proceedings of the Indiana Utility Regulatory Commission ("Commission" or "IURC"):**
  - 1) All technical conferences, attorney conferences, uncontested pre-hearing conferences, uncontested settlement hearings and all other uncontested hearings may be conducted electronically at the discretion of, and determination by, the Presiding Officers, on a case-by-case basis.**
  - 2) All contested hearings may be conducted electronically at the discretion of, and determination by, the Presiding Officers, on a case-by-case basis if all parties consent.**
  - 3) Notwithstanding subsection 2), any evidentiary hearing, including field hearings, may be conducted electronically in whole or in part to protect the health and safety of participants or other good cause shown as determined by the Presiding Officers, or order of the Commission, on a case-by-case basis.**
  - 4) Any electronic or virtual evidentiary hearings shall be conducted in a manner that preserves the rights of the parties to conduct cross-examination, timely object to the admission of testimony presented at the evidentiary hearing, and otherwise present and defend their cases without prejudice or loss of due process.**
  - 5) Parties are encouraged to work cooperatively to promote efficient proceedings while retaining the ability of parties to present and defend their positions.**

The presiding officers should have the discretion to unilaterally choose to conduct virtual hearings on cases where it is established there will not be any cross-examination or the need to present evidence that may be contested. However, virtual hearings for contested cases present difficulties to parties such as the need to disseminate cross-examination exhibits, particularly when cross-examination exhibits may not be planned but are necessitated by a statement from a witness. Further, the potential for technical difficulties may affect the ability of parties to present and defend their cases. Accordingly, the OUCC urges the Commission to not establish a process where parties in contested cases will be compelled by other parties or the presiding officers to conduct cross-examination and defend cases remotely. However, there should be a mechanism for the Commission to both allow and require virtual hearings when there are health and safety concerns, such as the current COVID-19 pandemic or other showing of good cause. In no event should a party be deprived of the opportunity to conduct thorough cross-examination or be otherwise prejudiced by the decision to conduct a virtual hearing. In lieu of establishing a process on a case-by-case basis that preserves all parties' due process rights, the Commission may consider establishing rules or guidelines for conducting hearings through electronic means to promote consistent process and safeguard the ability of parties to present and defend their cases without prejudice.

**II. B. An index of issues shall be provided as a workpaper by any party that has at least eight witnesses providing testimony and at least two of those witnesses provide testimony on the same issue or issues. A sample index is attached hereto.**

The OUCC supports this requirement. In larger cases, the OUCC would have found indexes helpful, particularly in light of the new mandatory timeframes, which require responding parties to make assignments of staff as soon as possible. In one case, the OUCC issued discovery asking a party to identify which witnesses among many witnesses addressed a certain topic, and it did not receive the requested information. This provision will help avoid such issues. The OUCC suggests two specific proposals that require explanation. First, in cases that have had eight or fewer witnesses, the OUCC has generally not been disadvantaged by the lack of an index. Therefore, the OUCC considers the cost of preparing an index to outweigh the benefit in cases involving eight or fewer witnesses. Second, the OUCC proposes the index be provided as a workpaper, as it is not intended to provide evidence but only serve as a guide to evidence. In any event, the index should be a simple, straightforward guide, and it should not be used as an opportunity to advocate a position or summarize arguments. Finally, treating the index as a workpaper will permit responding parties to submit a more accurate and comprehensive index after appropriate reflection, as prehearing conferences usually establish that workpapers are due two days after testimony is filed.

**C. Inputs used to calculate revenues, expenses and other revenue requirements should be transparent and subject to inquiry and analysis. Any spreadsheet submitted by any party shall be provided as an Excel spreadsheet with formulas intact so that**

**inputs may be known and verified. Workpapers shall include explicit references to other applicable workpapers or linkages to all source or precursor spreadsheets.**

The OUCC supports the Commission's provision to require workpaper spreadsheets in a format that allows other parties to determine the inputs and manipulate them to address regulatory requirements and proposals. The OUCC's proposed changes are merely designed to assist with compliance by stating explicitly the goal of allowing responding parties and the Commission to see and verify inputs for accuracy and appropriateness.

**E. Proposed orders shall:**

- I. Provide facts used to support the findings and cite those facts, providing the exhibit name/designation and page number;**
- II. Limit the recitation of facts to those facts the submitting party considers to be the substantive evidence upon which the findings that support the ultimate conclusion(s) should be based;**
- III. Not include any new evidence or new arguments not supported by the evidence of record (i.e., not submitted or made during the evidentiary hearing); and**
- IV. Not include settlement agreements entered into after the record is closed.**

The OUCC's supports adoption of the foregoing language, which closely tracks the Commission's strawman. The OUCC's changes reflect that the submitting parties are advocating for particular findings; therefore, the facts on which the Commission will be anticipated to decide will vary from party to party. The OUCC also asks the Commission to replace the phrase "new factual arguments" with the phrase "new arguments not supported by the evidence of record." The OUCC believes the phrase "new factual arguments" may unintentionally indicate that parties would not be permitted to propose factual findings that may logically be drawn from the whole evidence of record including evidence first presented at the final hearing (e.g. oral testimony under oath).

**III.**

**. . . . . A petitioner requesting an increase in multiple phases shall state the foregoing information for each phase. Any description of proposed rate increase or cost recovery should address how the utility's various customer classes will be affected.**

The OUCC supports the Commission encouraging utilities to recognize the necessity of the Commission basing its decisions on evidence and the obligation of the petitioning party to provide that evidence. The OUCC made minor suggestions, which it considers self-explanatory.

The OUCC also asks the Commission to require utilities to disclose the effect of its proposals in any requested phases and to state how various rate classifications would be affected.

**IV. A. At a minimum, in the general presentation of municipal and investor-owned utility strawman schedules, the testimony and workpapers shall present the following specific schedules: (1) Balance Sheet, (2) Income Statement, (3) Sch. 1 Revenue Requirements, (4) Sch. 4. *Pro Forma* Net Operating Income, and (5) the Gross Revenue Conversion Factor. Items (3) through (5) listed above are posted on the Commission’s website. Not-for-profit utilities should use the municipal strawman schedules, to the extent applicable, posted on the Commission’s website. A utility’s Balance Sheet and Income Statement should be presented in a similar format to that provided in the utility’s IURC Annual Report.**

**B. The Sch. 4 *Pro Forma* Net Operating Income statement should be detailed by each revenue and expense category. Every adjustment to revenues and expenses should at a minimum include the historical test year or base year, the adjustments thereto, and *pro forma* amounts, as well as reference(s) to where more detail of each calculation may be found.**

The OUCC’s proposed changes to Section IV of the Strawman are largely clarifications to advance the requested process. The OUCC supports the Commission’s requirements for historical test years and base years, which the Commission specified in an earlier GAO should be used in any forward-looking test period. The OUCC also added language designed to direct not-for profit public utilities to use applicable municipal schedules posted on the Commission’s website.

**V. The following shall apply to applications for approval of Pilot Programs:**

**The Commission encourages any temporary untested program that requires Commission approval to be presented to the Commission and identified as a Pilot Program. For purposes of this section, a “pilot program” means “an experiment of limited duration designed to evaluate the costs and benefits of the program.” Further, pilot programs test the ability of providing additional benefits to ratepayers without risking significant cost to the utility and undue rate impact. Applications for approval of pilot programs should show the costs of programs and describe the benefits to both participants in any program and all of the utility’s customers. To that end, applications for pilot programs shall:**

**A. Fully describe the need and goals of the program;**

**B. Propose and design objective evaluation criteria to measure the success and usefulness of the pilot program;**

- C. Provide an estimate of all the costs of the pilot program;**
- D. Allow for reasonable flexibility;**
- E. Propose a timeline for completion and termination of the pilot program; and**
- F. Include testimony explaining why the program will benefit all of the utility's customers, not just program participants (i.e., establish why will the program be in the public interest).**

The OUCC considers it helpful to both consumer parties and utilities proposing pilot programs to have explicit guidelines and criteria for utilities to follow when presenting requests for approval of pilot programs. As it has suggested in its previous comments, the OUCC proposes establishing a definition of pilot program for the purpose of this GAO. The OUCC also proposes some additional specific requirements to be merged with those stated by the Commission in its Strawman.

- VI. This General Administrative Order is intended to promote procedural efficiencies. Compliance with this General Administrative Order does not establish that a party has met its burden of proof or otherwise restrict any party's right to contest whether another party has met its burden of proof.**

The OUCC considers the foregoing to reinforce the principle that the general administrative order is not intended to establish, expand or diminish any party's burden of proving its case.